

The complaint

Mr H complains that Clydesdale Bank Plc (trading as Virgin Money) unfairly recorded a fraud marker against him and refuses to remove it.

What happened

Mr H held a current account with Virgin Money. In 2019, payments took Mr H into an unarranged overdraft. Mr H said he lost his job at the time and was experiencing financial difficulties. Virgin Money wrote to him several times to advise that if he didn't repay the debt owed, his account would be closed and a default marker would be registered against him. Mr H said he buried his head in the sand as he was in debt. But he also said he tried contacting Virgin Money on a number of occasions prior to the debt defaulting. He said he was passed to a few departments and was told the account was closed and the money was written off and there was no way for him to pay this balance. He said this happened on a few occasions, including in branch where they advised a payment couldn't be taken from him as the account was with collections.

Mr H said he discovered Virgin Money recorded a Cifas marker against him for 'evasion of payment' as he was unable to open accounts with other lenders. He complained that this was not fair given the circumstances.

Virgin Money issued its final response explaining that it sent Mr H multiple letters providing him with options on how to clear the arrears. It said the letters advised that if the outstanding amount was not repaid, his credit file would be affected. As it didn't receive the funds from him, a Cifas marker was registered in line with its processes and procedures, and the balance was written off and it stopped chasing him for payment. It acknowledged a call Mr H had with it on 12 November 2019 where its colleagues advised the account was no longer active, it noted that Mr H said he'd pay back the balance owed but received no further payment. It concluded it made no error in recording the Cifas marker. It did however recognise that it delayed in responding to his complaint and offered him £50 compensation for the delay.

Unhappy with its response, Mr H referred his complaint to this service.

In Virgin Money's response to this service, it said it made reference to a Cifas marker being placed on Mr H's credit file but it believed this was incorrect as it was a 'CAIS marker' which was recorded and apologised for the confusion caused. Mr H provided evidence that Virgin Money recorded a Cifas marker against him on 6 November 2019.

One of our Investigators looked into things. He didn't think Virgin Money fairly recorded the Cifas marker against Mr H and suggested that it be removed. Mr H agreed but Virgin Money didn't.

The complaint has therefore been passed to me for review.

Before issuing this decision, I requested additional information from Virgin Money which it duly provided. I explained to Virgin Money (and Mr H) that I didn't think the Cifas marker was

correctly recorded and provisionally said I intended to award an additional £200 compensation for the trouble and upset caused. Virgin felt its recording of the Cifas marker was correct and asked me to proceed with my decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I uphold Mr H's complaint.

While a business is a member of Cifas (as Virgin Money is), that business must operate within the terms of the National Fraud Database Handbook. This sets out eight principles of use, including guidance on when a member can record information on the database. The guidance explains members can only record information with Cifas if it's supported by evidence that meets 'four pillars' burden of proof. These include (amongst others):

- That there are reasonable grounds to believe that a Fraud or Financial Crime has been committed or attempted;
- That the evidence must be clear, relevant and rigorous

In summary a business can't apply a Cifas marker because it suspects fraud. It needs sufficient evidence to back up what it's alleging and a criminal offence must be identifiable – so the business could confidently report the consumer to the police. It also needs to retain this evidence for a period the marker is active. When considering these standards, my interpretation of the bar for recording a Cifas marker is a high one. I must also take into consideration what is fair and reasonable in the circumstances. Having done so, I don't find that the marker was applied correctly here, and I'll explain why.

Mr H had regular salary credits going into his Virgin Money current account with the final payment being in January 2019. Those salary credits ceased after this time. I've also noted that Mr H regularly used gambling websites when he received a regular salary. After Mr H's salary credits stopped, it's clear from looking at Mr H's statements that he struggled to maintain his regular payment commitments. I saw that he disputed a few payments with Virgin Money that took him into an unarranged overdraft before the account was brought back into credit. In other words, whilst I don't see that Mr H explicitly told Virgin Money he was in financial difficulties, I think Virgin Money could have reasonably concluded this by reviewing the significant change in his account activity.

Virgin Money wrote to Mr H on 18 March 2019 explaining that his account was in an unarranged overdraft of £22.89 and he needed to make a payment to clear the balance. Further letters were sent about the outstanding balance owed on 25 March 2019 and 8 April 2019. Mr H paid money in to clear the balance on 12 April 2019.

On 5 June 2019, Virgin Money wrote to Mr H to explain he was in an unarranged overdraft and needed to pay £92.26 to clear the balance. On 12 June 2019, Virgin Money wrote to Mr H to reiterate its previous letter. It wrote to Mr H again about the balance owed on 19 June 2019. Mr H brought his account back into credit again.

On 1 August 2019, two payments totalling £97.27 debited Mr H's account when he only had an available balance of £31.06. Virgin Money wrote to him about his overdrawn balance of £66.21 on 9 August 2019. On 2 September 2019 and 14 October 2019 Virgin Money wrote to Mr H about this balance again and advised unless the outstanding amount was paid it would register a default against his credit file. On 1 November 2019, Virgin Money wrote to

Mr H to advise that he can no longer use his account and it had applied to register a default against him.

On 6 November 2019, Virgin Money applied a misuse of facility Cifas marker against Mr H for 'Evasion of payment'.

On 12 November 2019, Mr H called Virgin Money and queried the outstanding balance. He asked if he could arrange a payment plan to repay the debt owed, the adviser said: *'it looks like your account is due to be closed very shortly...the account would be closed'* Mr H asked again if he could set up a payment plan to repay the debt over two or three months. The adviser said, 'we can't', he said as the account has passed the 90 day mark it would just be closed. The adviser went on to explain if Mr H wanted to apply for another current account, he could look on its website. Mr H said he 'wasn't bothered about keeping the account open', he was just 'wanting to sort the balance'. The adviser paused the call for a while, when he returned he said Mr H could pay the outstanding balance and it would be marked on his credit file and he'd have six months to do so.

In my view, this was a missed opportunity for Virgin Money to provide positive assistance to Mr H. I'm unclear as to why the adviser told Mr H that he had six months to repay the balance when the account had defaulted at the point of the phone call. Further to this, as Virgin Money explained in its final response, it wrote the balance off after the default and didn't chase Mr H for any further payment, so he wouldn't have been given any further options to repay the debt owed as suggested in the call.

Whilst I think Virgin Money explained the implications of Mr H not repaying the outstanding balance, in that Mr H's credit file would be impacted with a default marker. I think the suggestion that Mr H had committed or attempted to commit fraud in the circumstances is unreasonable.

As already explained, Mr H's account was in an unarranged overdraft on more than one occasion after losing his job. He brought it back into credit on more than one occasion and in November 2019, he contacted Virgin Money to arrange repayment of the debt owed, he did not disengage with it. These don't appear to me to be the actions of someone intent on defrauding a business. He did appear to be in financial difficulties and contacted Virgin Money to repay the outstanding balance – albeit three months after Virgin Money initially wrote to him to say this payment was due.

In my judgement, I don't find that falling into financial difficulties or poor management of finances reasonably amounts to a fraud or financial crime. And as the required burden of proof outlines, members must have reasonable grounds to believe that one of these has been committed or attempted. It must also have robust evidence that supports the consumer's conduct or actions were deliberate and intentionally dishonest such that they could be confidently reported to the police. I don't find that Virgin Money has been able to demonstrate that here. I think Virgin Money ought to have reasonably identified that Mr H was in financial difficulties prior to loading the marker but it most certainly had sufficient evidence to remove its loading when Mr H offered to repay the outstanding debt on 12 November 2019. I find that Virgin Money did make an error in loading it.

Putting things right

Virgin Money offered £50 compensation for its delays in responding to Mr H. As this point hasn't been disputed by Mr H, I make no finding on it other than Virgin Money should arrange the payment as offered.

Cifas markers do have a detrimental impact on a consumer's finances. However, I recognise that a default marker would also have had a similar impact, so I can't say with any certainty that the Cifas marker alone would have caused the difficulties in Mr H obtaining credit. But I do find Mr H's testimony plausible that his inability to open bank accounts is likely due to the Cifas marker incorrectly recorded against him by Virgin Money. I think it would be fair and reasonable for Virgin Money to pay Mr H an additional £200 for the trouble and upset this matter has caused him.

My final decision

My final decision is, I uphold this complaint and direct Clydesdale Bank Plc (trading as Virgin Money), to:

- Remove the Cifas marker loaded against Mr H.
- Pay Mr H a total of £250 compensation for the trouble and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 5 January 2024.

Dolores Njemanze
Ombudsman